

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SA MUSIC, LLC and WILLIAM
KOLBERT, AS TRUSTEE OF THE
HAROLD ARLEN TRUST,

Plaintiffs.

V.

AMAZON.COM, INC., AMAZON
DIGITAL SERVICES LLC, VALLEYARM
DIGITAL LIMITED; and LEANANDES
LTD..

Defendants.

CASE NO. 2:20-cv-00105-BAT
(Arlen Docket)

CASE NO. 2:20-cv-00106-BAT
(Henderson Docket)

CASE NO. 2:20-CV-00107-BAT
(Warren Docket)

STIPULATED PROTECTIVE ORDER

RAY HENDERSON MUSIC CO., INC.

Plaintiff,

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AMAZON.COM, INC.; AMAZON
DIGITAL SERVICES LLC;
VALLEYARM DIGITAL LIMITED; and
LENANDES LTD

Defendants

1 FOUR JAYS MUSIC COMPANY and
2 JULIA RIVA,
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Plaintiffs,

4 v.
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6 AMAZON.COM, INC.; AMAZON
7 DIGITAL SERVICES LLC;
8 VALLEYARM DIGITAL LIMITED; and
9 LENANDES LTD,

10 Defendants.
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12 Plaintiffs SA Music LLC, William Kolbert as Trustee of the Harold Arlen Trust, Ray
13 Henderson Music Co., Inc., Four Jays Music Company and Julia Riva (collectively, "Plaintiffs")
14 and Defendants Amazon.com, Inc., Amazon Digital Services LLC, and Valleyarm Distribution
15 Limited (collectively, "Defendants") submit a proposed stipulated protective order governing
16 discovery of Electronically-Stored Information ("ESI"). Arlen Dkt. 68; Henderson Dkt. 64;
17 Warren Dkt. 65. Accordingly, it is **ORDERED** that this Stipulated Protective Order shall govern
18 the discovery of ESI as follows:
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20 1. PURPOSES AND LIMITATIONS
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22 Discovery in this action is likely to involve production of confidential, proprietary, or
23 private information for which special protection may be warranted. Accordingly, the parties have
stipulated to and petitioned the Court enter this Stipulated Protective Order. The parties
acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
protection on all disclosures or responses to discovery, the protection it affords from public
disclosure and use extends only to the limited information or items that are entitled to
confidential treatment under the applicable legal principles, and it does not presumptively entitle
parties to file confidential information under seal.

1 2. **“CONFIDENTIAL” MATERIAL**

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged:

4 a) Financial information not previously disclosed to the public (including without
5 limitation financial reports, royalty rates and fees, and sales data);
6 b) Business plans, product development information, or marketing plans not
7 previously disclosed to the public;
8 c) Proprietary business information or communications, including negotiations of
9 business agreements and licenses;
10 d) Any information of a personal or intimate nature regarding an individual,
11 including but not limited to any information or data defined as “personal data” as
12 that term is defined in applicable data privacy laws or regulations; and
13 e) Information for which applicable law requires confidential treatment.

14 A party producing any confidential material may designate as “Attorney’s Eyes Only”
15 such material consistent with the above categories of confidential information where the
16 producing party reasonably and in good faith believes that disclosure of the material to the full
17 extent otherwise permitted by this Order could result in competitive, commercial, or personal
18 harm to any person, or to improper market manipulation.

19 3. **SCOPE**

20 The protections conferred by this agreement cover not only confidential material (as
21 defined above), but also (1) any information copied or extracted from confidential material; (2)
22 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
23 conversations, or presentations by parties or their counsel that might reveal confidential material.

1 However, the protections conferred by this agreement do not cover information that is in
2 the public domain or becomes part of the public domain through trial or otherwise.

3 Further, the parties agree that this Protective Order does not apply to the production of
4 technical materials that may reveal the workings of a party or third-party's proprietary
5 technology, including source code, object code listings and descriptions of object code,
6 Hardware Description Language (HDL) or Register Transfer Level (RTL). Presently the parties
7 do not anticipate production of such technical materials being necessary in this proceeding. To
8 the extent production of technical materials becomes necessary to the prosecution or defense of
9 the case, the parties will negotiate supplemental terms to this Protective Order that specifically
10 govern the production of the technical documents.

11 4. ACCESS TO AND USE OF CONFIDENTIAL AND ATTORNEY'S EYES ONLY
12 MATERIAL

13 4.1 Basic Principles. A receiving party may use Confidential or Attorney's Eyes Only
14 material (collectively "designated material") that is disclosed or produced by another party or by
15 a non-party in connection with this case only for prosecuting, defending, or attempting to settle
16 this litigation. Designated material may be disclosed only to the categories of persons and under
17 the conditions described in this agreement. Designated material must be stored and maintained
18 by a receiving party at a location within the United States and in a secure manner that ensures
19 that access is limited to the persons authorized under this agreement. To ensure compliance with
20 applicable United States Export Administration Regulations, designated material may not be
21 exported outside the United States or released to any foreign national (even if within the United
22 States).

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2 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
3 ordered by the court or permitted in writing by the designating party, a receiving party may
4 disclose any confidential material only to:

5 (a) the receiving party’s counsel of record in this action, as well as employees
6 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

7 (b) the officers, directors, and employees (including in house counsel) of the
8 receiving party to whom disclosure is reasonably necessary for this litigation;

9 (c) experts and consultants to whom disclosure is reasonably necessary for
10 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
11 A);

12 (d) the court, court personnel, and court reporters and their staff;

13 (e) copy or imaging services retained by counsel to assist in the duplication of
14 confidential material, provided that counsel for the party retaining the copy or imaging service
15 instructs the service not to disclose any confidential material to third parties and to immediately
16 return all originals and copies of any confidential material;

17 (f) during their depositions, witnesses in the action to whom disclosure is
18 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
19 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
20 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
21 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
22 under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Disclosure of “Attorney’s Eyes Only” Information or Items.

Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any material designated “ATTORNEY’S EYES ONLY” only to the persons in above-listed subsections (a), (c), (d), (e), and (g) of Section 4.2.

4.4 Filing Designated Material. Before filing designated material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential or attorney's eyes only designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to

1 unnecessarily encumber or delay the case development process or to impose unnecessary
2 expenses and burdens on other parties) expose the designating party to sanctions.

3 If it comes to a designating party's attention that information or items that it designated
4 for protection do not qualify for protection, the designating party must promptly notify all other
5 parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this
7 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
8 ordered, disclosure or discovery material that qualifies for protection under this agreement must
9 be clearly so designated before or when the material is disclosed or produced.

10 (a) Information in documentary form: (e.g., paper or electronic documents
11 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), the designating party must affix the word "CONFIDENTIAL" or "Attorney's Eyes
13 Only" to each page that contains designated material.

14 (b) Testimony given in deposition or in other trial or pretrial proceedings: the
15 parties and any participating non-parties must identify on the record, during the deposition,
16 hearing or other proceeding, all protected testimony, without prejudice to their right to so
17 designate other testimony after reviewing the transcript. Any party or non-party may, within
18 fifteen days after receiving the transcript of a deposition transcript, designate portions of the
19 deposition transcript, or exhibits thereto, as confidential or attorney's eyes only. If a party or
20 non-party desires to protect confidential or attorney's eyes only information at trial, the issue
21 should be addressed during the pre-trial conference.

22 (c) Other tangible items: the producing party must affix in a prominent place
23 on the exterior of the container or containers in which the information or item is stored the words

1 “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY.” If only a portion or portions of the
2 information or item warrant protection, the producing party, to the extent practicable, shall
3 identify the protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
5 designate qualified information or items does not, standing alone, waive the designating party’s
6 right to secure protection under this agreement for such material. Upon timely correction of a
7 designation, the receiving party must make reasonable efforts to ensure that the material is
8 treated in accordance with the provisions of this agreement.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
11 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
13 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
14 challenge a confidentiality designation by electing not to mount a challenge promptly after the
15 original designation is disclosed.

16 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
17 regarding confidential designations without court involvement. Any motion regarding
18 confidential designations or for a protective order must include a certification, in the motion or in
19 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
20 conference with other affected parties in an effort to resolve the dispute without court action. The
21 certification must list the date, manner, and participants to the conference. A good faith effort to
22 confer requires a face-to-face meeting or a telephone conference.

1 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
2 intervention, the designating party may file and serve a motion to retain confidentiality under
3 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable).

4 The burden of persuasion in any such motion shall be on the designating party. Frivolous
5 challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
6 expenses and burdens on other parties) may expose the challenging party to sanctions. All parties
7 shall continue to maintain the material in question as confidential until the court rules on the
8 challenge.

9 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
10 OTHER LITIGATION

11 If a party is served with a subpoena or a court order issued in other litigation that compels
12 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
13 “ATTORNEY’S EYES ONLY,” that party must:

14 (a) promptly notify the designating party in writing and include a copy of the
15 subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order to
17 issue in the other litigation that some or all of the material covered by the subpoena or order is
18 subject to this agreement. Such notification shall include a copy of this agreement; and

19 (c) cooperate with respect to all reasonable procedures sought to be pursued
20 by the designating party whose designated material may be affected.

21 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a receiving party learns that, by inadvertence or otherwise, it has disclosed designated
23 material to any person or in any circumstance not authorized under this agreement, the receiving
party must immediately (a) notify in writing the designating party of the unauthorized

1 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
2 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
3 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
4 Agreement to Be Bound" that is attached hereto as Exhibit A.

5 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL**

7 When a producing party gives notice to receiving parties that certain inadvertently
8 produced material is subject to a claim of privilege or other protection, the obligations of the
9 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
10 provision is not intended to modify whatever procedure may be established in an e-discovery
11 order or agreement that provides for production without prior privilege review. The parties agree
12 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

13 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

14 Within 60 days after the termination of this action, including all appeals, each receiving
15 party must return all designated material to the producing party, including all copies, extracts and
16 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

17 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
18 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
19 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
20 work product, even if such materials contain designated material.

21 The confidentiality obligations imposed by this Stipulated Protective Order shall remain
22 in effect until a designating party agrees otherwise in writing or a court orders otherwise.

23 **IT IS FURTHER ORDERED** that pursuant to Fed. R. Evid. 502(d), the production of
any documents in this proceeding shall not, for the purposes of this proceeding or any other

1 federal or state proceeding, constitute a waiver by the producing party of any privilege applicable
2 to those documents, including the attorney-client privilege, attorney work-product protection, or
3 any other privilege or protection recognized by law.

4 DATED this 11th day of September, 2020.

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7 BRIAN A. TSUCHIDA
8 Chief United States Magistrate Judge
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